

AMENDED IN ASSEMBLY JUNE 10, 2014

AMENDED IN SENATE MAY 27, 2014

AMENDED IN SENATE APRIL 21, 2014

AMENDED IN SENATE MARCH 24, 2014

SENATE BILL

No. 1019

Introduced by Senator Leno

February 14, 2014

An act to add Section 19094 to the Business and Professions Code, relating to business.

LEGISLATIVE COUNSEL'S DIGEST

SB 1019, as amended, Leno. Upholstered furniture: flame retardant chemicals.

Existing federal law requires the Consumer Product Safety Commission to institute proceedings for the determination of an appropriate flammability standard if the commission finds that such a standard, including labeling, for a fabric, related material, or product, may be needed to protect the public. Existing federal law authorizes a state to establish a flammability standard if, among other things, it provides a higher degree of protection from the risk of fire.

Existing state law, the Home Furnishings and Thermal Insulation Act, provides for the licensure and regulation of upholstered furniture manufacturers by the Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation. Existing state law requires every upholstered-furniture manufacturer to hold a furniture and bedding manufacturer's license. Existing state law also requires every upholstered-furniture retailer to hold a retail furniture dealer's license.

A violation of the act is a crime and each offense is punishable by a fine, as specified.

Existing state law requires *certain* upholstered furniture and bedding to contain a specified label that is ~~securely fastened in a manner approved by the bureau~~ *permanently attached* in an area open to visible view. Existing state law establishes a standard to produce upholstered furniture which is safer from the hazards associated with smoldering ignition. This standard provides methods for smolder resistance of cover fabrics, barrier materials, resilient filling materials, and decking materials for use in upholstered furniture.

This bill would require a manufacturer of covered products, as defined, to indicate whether or not the product contains added flame retardant chemicals, as defined, by including a specified statement on that label.

The bill would require the manufacturer of the covered product to retain sufficient documentation to show whether flame retardant chemicals were added to a covered product or component. The bill would provide that a written ~~affidavit~~ *statement* by the supplier of each component attesting that flame retardant chemicals were added or not added is sufficient to make this showing. The bill would require the bureau to assess a fine for a violation of the documentation ~~requirement~~, *requirement or for failure to provide, upon request, the required documentation to the bureau*, as specified.

The bill would require a manufacturer of a covered product sold in California, upon request, to provide to the bureau, within 30 days of the request, documentation establishing the accuracy of the flame retardant chemical statement on the label. The bill would require the bureau to provide the Department of Toxic Substances Control with samples of the covered product or components thereof sold in California from products marked “contain NO added flame retardant chemicals” for testing for the presence of added flame retardant chemicals, as specified. If the department’s testing shows that a covered product labeled as “contain NO added flame retardant chemicals” is mislabeled because it contains added flame retardant chemicals, the bill would require the bureau to assess fines for violations against manufacturers of the covered product and component manufacturers, as specified.

The bill would require the bureau to make information about any citation issued pursuant to its provisions available to the public on its Internet Web site. The bill would also make it the duty of the bureau to receive consumer complaints.

The bill would authorize the bureau to adopt regulations to carry out these provisions.

Because a violation of the bill's requirements would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) In 1975, California implemented Technical Bulletin 117,
4 which requires that materials, such as polyurethane foam, used to
5 fill furniture be able to withstand a small open flame for at least
6 12 seconds.

7 (b) Flame retardant chemicals are used widely in upholstered
8 furniture to meet the flame retardant standards of the Bureau of
9 Electronic and Appliance Repair, Home Furnishings, and Thermal
10 Insulation's Technical Bulletin 117.

11 (c) People are exposed to flame retardant chemicals in multiple
12 ways, including when the chemicals migrate from furniture and
13 other consumer products into air and dust in the home or
14 workplace.

15 (d) Some of these chemicals can persist in the environment,
16 bioaccumulate in people and animals, and have been shown to
17 cause adverse developmental effects in animals and humans.

18 (e) A study by the California Environmental Protection Agency
19 found that women in California have much higher levels of toxic
20 flame retardants in their breast tissue than women in other states
21 and countries. Studies published in the journal of Environmental
22 Research show that children in California have much higher levels
23 of flame retardant chemicals than children elsewhere in the country.

24 (f) A study published in the Journal of Occupational and
25 Environmental Medicine concluded that firefighters have a

1 significantly elevated risk of cancer that may be attributed to toxic
2 chemicals they inhale, including flame retardants.

3 (g) California consumers have become increasingly concerned
4 about the potential adverse human health impacts due to exposure
5 to certain chemical flame retardants. Various studies have linked
6 exposure to flame retardants to cancer, lower IQs and attention
7 problems, male infertility, male birth defects, and early puberty in
8 girls.

9 (h) In 2012, the Chairman of the federal Consumer Product
10 Safety Commission testified to Congress that “the fire-retardant
11 foams did not offer a practically significant greater level of open
12 flame safety than the untreated foams.”

13 (i) In 2012, the Chicago Tribune newspaper published a series
14 of investigative reports that showed that the claims of the efficacy
15 of flame retardants in furniture misrepresent the science.

16 (j) In 2012, Governor Brown asked the Bureau of Electronic
17 and Appliance Repair, Home Furnishings, and Thermal Insulation
18 to review the state’s four-decade-old flammability standards and
19 recommend changes to reduce toxic flame retardants while
20 continuing to ensure fire safety.

21 (k) The Bureau of Electronic and Appliance Repair, Home
22 Furnishings, and Thermal Insulation concluded that ~~the presence~~
23 ~~of flame retardant chemicals in furniture does not provide a~~
24 ~~meaningful fire safety benefit.~~ *“studies show that fire retardant*
25 *(FR) tested foam does not provide a meaningful difference in egress*
26 *time from non-FR foam and increases smoldering propensity.”* In
27 2013, the Bureau of Electronic and Appliance Repair, Home
28 Furnishings, and Thermal Insulation promulgated regulations,
29 revising Technical Bulletin 117 to allow furniture manufacturers
30 to meet a smoldering standard. The revised Technical Bulletin
31 117-2013 provides improved fire safety standards without the use
32 of flame retardant chemicals.

33 (l) California consumers have voiced a desire to purchase
34 furniture that complies with Technical Bulletin 117-2013 but does
35 not contain flame retardant chemicals.

36 (m) Technical Bulletin 117-2013 can be met with or without
37 the use of flame retardant chemicals, but consumers currently have
38 no way to know whether flame retardant chemicals have been
39 added to the product.

(n) Upholstered furniture manufacturers and California’s retail industry recognize the intrinsic value of helping consumers make knowledgeable buying decisions and are uniquely positioned to take the lead in building trust in the marketplace. Providing information on the use of chemical flame retardants in upholstered furniture gives retailers a unique opportunity to respond to the needs of their customers. Consumers want to be able to exercise an informed choice and buy products that are not only safer for themselves and their families, but are products that will also keep our firefighters safer.

(o) It is, therefore, the intent of the Legislature in enacting this measure to provide California consumers clear information about the furniture products they are purchasing, specifically concerning compliance with fire safety standards and the absence or presence of added flame retardant chemicals.

SEC. 2. Section 19094 is added to the Business and Professions Code, to read:

19094. (a) For the purposes of this section, the following definitions shall apply:

(1) “Component” means the separate constituent parts of upholstered furniture sold in California, as identified in Technical Bulletin 117-2013, specifically cover fabrics, barrier materials, resilient filling materials, and decking materials.

(2) “Covered products” means any flexible polyurethane foam or upholstered or reupholstered furniture sold in California that is required to meet the test requirements set forth in Technical Bulletin 117-2013, entitled “Requirements, Test Procedure and Apparatus for Testing the Smolder Resistance of Materials Used in Upholstered Furniture.”

(3) “Added flame retardant chemicals” means flame retardant chemicals that are present in any covered product or component thereof at levels above 1,000 parts per million.

(4) “Department” means the Department of Toxic Substances Control.

(5) “Consumer Price Index” means the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics.

(b) (1) A manufacturer of covered products shall indicate whether or not the product contains added flame retardant chemicals by including the following “flame retardant chemical

statement” on the label described in Section ~~1126~~ 1374.3 of Title 4 of the California Code of Regulations for covered products:

“~~This product meets California’s furniture fire safety standard and the upholstery materials:~~

~~_____contain added flame retardant chemicals~~

~~_____contain NO added flame retardant chemicals~~

~~The Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation found that flame retardant chemicals in furniture do not provide a meaningful fire safety benefit. According to the Centers for Disease Control and Prevention (CDC), such flame retardant chemicals can migrate into air and dust where people can be exposed to them.”~~

~~“The upholstery materials in this product:~~

~~_____contain added flame retardant chemicals~~

~~_____contain NO added flame retardant chemicals~~

~~The State of California determined that the fire safety requirements for this product can be met without adding flame retardant chemicals. The state has identified many flame retardants as being known to, or strongly suspected of, adversely impacting human health or development.”~~

A manufacturer of covered products shall indicate the absence or presence of added flame retardant chemicals by placing an “X” in one of the appropriate blanks.

(2) This statement shall be included in the label described in Section ~~1126~~ 1374.3 of Title 4 of the California Code of Regulations in accordance with the bureau’s regulations for that label. *The statement need not be in all capital letters, and shall follow the statement required by Section 1374.3 of Title 4 of the California Code of Regulations.*

(c) (1) The manufacturer of the covered product sold in California shall retain documentation to show whether flame retardant chemicals were added. A written ~~affidavit~~ *statement* by the supplier of each component covered by Technical Bulletin 117-2013 attesting either that flame retardant chemicals were added or not added shall be sufficient documentation.

(2) The bureau shall ensure compliance with the labeling and documentation requirements in this section.

1 (3) (A) Upon request, a manufacturer of a covered product sold
2 in California shall provide to the bureau, within 30 days of the
3 request, documentation establishing the accuracy of the flame
4 retardant chemical statement on the label required by subdivision
5 (b).

6 (B) The bureau shall assess fines of not less than two thousand
7 five hundred dollars (\$2,500) but not more than fifteen thousand
8 dollars (\$15,000) in accordance with the factors described in
9 subdivision (d) for the failure of the manufacturer of the covered
10 product to maintain the documentation required by this ~~section~~
11 *section, or for the failure of the manufacturer of the covered*
12 *product to provide, upon request, the documentation required by*
13 *this section to the bureau.* These fines shall replace any other fines
14 in this article for a violation of the documentation requirements
15 of this section. This subparagraph does not alter or amend any
16 other penalty otherwise imposed by this article.

17 (C) A manufacturer of covered products and component
18 suppliers shall be jointly and severally liable for violations of the
19 documentation required in this section.

20 (D) The bureau shall provide the Department of Toxic
21 Substances Control with a selection of samples from covered
22 products marked “contain NO added flame retardant chemicals”
23 for testing for the presence of added flame retardant chemicals.
24 The samples shall be from the components identified in paragraph
25 (1) of subdivision (a). The bureau shall select samples based on
26 consultation with the department, taking into account a range of
27 manufacturers and types of covered products. The bureau and the
28 department shall consult on the tests to be conducted by the
29 department. The department shall provide the results of any
30 completed test to the bureau.

31 (E) (i) If the department’s testing shows that a covered product
32 labeled as “contain NO added flame retardant chemicals” is
33 mislabeled because it contains added flame retardant chemicals,
34 the bureau may assess fines for violations against manufacturers
35 of the covered product and component manufacturers to be held
36 jointly and severally liable for the violation.

37 (ii) A fine for a violation of this subparagraph relating to
38 mislabeling shall be assessed in accordance with factors described
39 in subdivision (d) and the following schedule:

1 (I) The fine for the first violation shall be not less than one
2 thousand dollars (\$1,000) but not more than two thousand five
3 hundred dollars (\$2,500).

4 (II) The fine for the second violation shall be not less than two
5 thousand five hundred dollars (\$2,500) but not more than five
6 thousand dollars (\$5,000).

7 (III) The fine for the third violation shall be not less than five
8 thousand dollars (\$5,000) but not more than seven thousand five
9 hundred dollars (\$7,500).

10 (IV) The fine for any subsequent violation shall be not less than
11 seven thousand five hundred dollars (\$7,500) but not more than
12 ten thousand dollars (\$10,000).

13 (iii) The fines in clause (ii) shall replace any other fines in this
14 article for a violation of the testing requirements of this section.
15 This clause does not alter or amend any other penalty otherwise
16 imposed by this article.

17 (iv) If the department's testing shows that a covered product
18 labeled as "contain NO added flame retardant chemicals" is
19 mislabeled because it contains added flame retardant chemicals,
20 in addition to a fine or any other request, the bureau may request
21 that the label required by subdivision (b) for covered products that
22 belong to the same stock keeping unit (SKU) currently produced
23 by the manufacturer be corrected to reflect that flame retardant
24 chemicals are added to the covered product.

25 (v) If the department's testing shows that a covered product
26 labeled as "contain NO added flame retardant chemicals" is
27 mislabeled because it contains added flame retardant chemicals,
28 in addition to a fine or any other request, the bureau may request
29 additional testing of more products belonging to the same stock
30 keeping unit (SKU) at the manufacturer's expense to verify the
31 accuracy of the label required by subdivision (b) for covered
32 products if the manufacturer wishes to retain the "contain NO
33 added flame retardant chemicals" designation on the label required
34 by subdivision (b).

35 (d) (1) The bureau shall make information about any citation
36 issued pursuant to this section available to the public on its Internet
37 Web site.

38 (2) In determining the amount of the fine for violations of this
39 section, the bureau shall consider the following factors:

40 (A) The nature and severity of the violation.

1 (B) The good or bad faith of the cited person.

2 (C) The history of previous violations.

3 (D) Evidence that the violation was willful.

4 (E) The extent to which the cited person or entity has cooperated
5 with the bureau.

6 (3) (A) The bureau shall adjust all minimum and maximum
7 fines imposed by this section for inflation every five years.

8 (B) The adjustment shall be equivalent to the percentage, if any,
9 that the Consumer Price Index at the time of adjustment exceeds
10 the Consumer Price Index at the time this section goes into effect.
11 Any increase determined under this paragraph shall be rounded as
12 follows:

13 (i) In multiples of ten dollars (\$10) in the case of penalties less
14 than or equal to one hundred dollars (\$100).

15 (ii) In multiples of one hundred dollars (\$100) in the case of
16 penalties greater than one hundred dollars (\$100) but less than or
17 equal to one thousand dollars (\$1,000).

18 (iii) In multiples of one thousand dollars (\$1,000) in the case
19 of penalties greater than one thousand dollars (\$1,000).

20 (4) It shall be the duty of the bureau to receive complaints from
21 consumers concerning covered products sold in California.

22 (e) The bureau may adopt regulations pursuant to the
23 Administrative Procedure Act (Chapter 3.5 (commencing with
24 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
25 Code) to carry out this section.

26 SEC. 3. No reimbursement is required by this act pursuant to
27 Section 6 of Article XIII B of the California Constitution because
28 the only costs that may be incurred by a local agency or school
29 district will be incurred because this act creates a new crime or
30 infraction, eliminates a crime or infraction, or changes the penalty
31 for a crime or infraction, within the meaning of Section 17556 of
32 the Government Code, or changes the definition of a crime within
33 the meaning of Section 6 of Article XIII B of the California
34 Constitution.